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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

AUG 17 1998

In the Matter of)
)
Access Charge Reform)
for Incumbent Local)
Exchange Carriers)
Subject to Rate-of-Return)
Regulation)

CC Docket No. 98-77

COMMENTS OF ATU TELECOMMUNICATIONS

The Municipality of Anchorage d/b/a Anchorage Telephone Utility a/k/a ATU Telecommunications ("ATU") files these comments in response to the Commission's Notice of Proposed Rulemaking in the above referenced proceeding.¹ This rulemaking proceeding represents the Commission's first step in reforming access rates to enable rate-of-return ("ROR") local exchange carriers ("LECs") to charge interstate access rates that are more consistent with principles of cost-causation and economic efficiency. This reform, however, offers few real benefits for ROR LECs -- such as ATU -- that are already operating in a competitive local exchange market. This proceeding is intended to remove distortions and inefficiencies in the current rate structures and rate levels, but nonetheless continues to mandate how ROR LECs must set their rates. ROR LECs facing competition in the local and access markets need to be able to set their rates based on market signals rather than from artificial rate regulations.

¹Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation (CC Docket No. 98-77), *Notice of Proposed Rulemaking* (released June 4, 1998) ("ROR Notice").

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So long as the Commission requires incumbent LECs to price artificially, competitive local exchange carriers ("CLECs") will compete around FCC-mandated price discrimination.

The Commission has indicated that it will address pricing flexibility for ROR LECs in a separate proceeding. However, ROR LECs operating in competitive markets cannot wait for the Commission to implement pricing flexibility rules. Although it appears as though competition is beginning to evolve in large metropolitan areas, competition will not be limited to these areas. Effective, area-wide facilities-based competition exists today in Anchorage and may soon exist in other mid-sized markets because of the relative ease of penetrating a smaller market.² Once this happens, ROR companies will need true access reform measures sooner than larger Price Cap carriers. These LECs must be able to react to their customers, competitors, and market signals immediately. Accordingly, ATU urges the Commission to work expeditiously to implement pricing flexibility and, as an interim measure, to adopt a streamlined waiver procedure to provide regulatory relief for ROR LECs facing competition.

A. Rate-of-Return LECs Operating in Competitive Markets Must Have Pricing Flexibility Now.

Through this rulemaking, the Commission intends to implement a market-based approach for setting access rates. The Commission plans to adopt rules that will "give carriers progressively greater flexibility in setting rates

² Once access subsidies are removed and state commissions remove rural exemptions, many ROR LECs will become extremely vulnerable to facilities-based competition. A single switch collocated in the incumbent carrier's central office, fiber to one or two large customers, and effective facilities-based competition has entered a smaller ROR market. Consequently, facilities-

as competition develops, gradually replacing regulation with competition as the primary means of setting prices and facilitating investment decisions."³ However, competition is entering each market at a different pace. The Commission's regulations do not provide immediate regulatory relief for those carriers that are further down the road of competition.

ATU currently faces intense, facilities-based competition in its local exchange market. The Alaska Public Utilities Commission ("APUC") has responded by granting ATU regulatory relief. For example, ATU's certificate to enter the intrastate toll market contained many restrictions. As a result of competition, the APUC has lifted the local and toll bundling restriction. The APUC also recently waived ATU's intrastate access charge filing requirement for 1999 and has granted downward pricing flexibility for these rate elements. The APUC has implemented new regulations granting local pricing flexibility allowing ATU to reduce retail rates, offer new or re-packaged services and implement special contracts for retail service without APUC approval after 30 days' notice to the APUC. The APUC's shift in focus from rate-of-return regulation to monitoring a competitive market has stimulated competition. However, as ATU gains flexibility in the state jurisdiction, the interstate jurisdiction remains a stifling factor in serving and competing for the many kinds of customers (wholesale, retail, access, etc.) in ATU's serving area.

based competition may enter mid-size rate-of-return markets more quickly than large urban markets.

³ Access Charge Reform (CC Docket No. 96-262), *First Report and Order*, 12 FCC Rcd 15982, 15989 (1997).

In a competitive market, an incumbent carrier can no longer shift costs between its former monopoly services. Thus, the fundamental proposition on which rate regulation rests – market power – is no longer valid. In competitive markets, the market itself should be monitored, not the individual participant's pricing and revenue recovery mechanisms. Carriers facing competition must be able to offer term and volume discounts, and otherwise modify rates for competitive services. Where market rates are being reduced, demand is being stimulated, and new products and services are being introduced to the market, rate-of-return regulation is no longer needed.

As ATU and other ROR LECs require regulatory relief immediately, the Commission should adopt, as an interim measure, a streamlined process to grant waivers of Part 69 regulations. Under a streamlined procedure, Part 69 waiver requests would be placed on a 14-day public notice, and the Commission should issue a decision within 30 days. The streamlined procedure should include a rebuttable presumption that the waiver will be granted absent some showing of demonstrable public harm.

B. Access Reform Does Not Address The Needs Of Rate-Of-Return LECs Operating In Competitive Markets.

Access reform is one of a series of actions that collectively are intended to foster and accelerate the introduction of efficient competition in all telecommunications markets, pursuant to the mandate of the Telecommunications Act of 1996.⁴ However, the proposed access reform rules simply take costs from one category of cost recovery, local switching, and

transfer them to another category, carrier common line. Merely taking costs that were recovered through usage sensitive rate elements and recovering them through fixed monthly recurring rate elements is just "shuffling the deck chairs on the Titanic" and does nothing to accelerate or accommodate efficient competition.

The proposed "reforms" perpetuate rate regulation and are a carbon copy of those placed upon price cap carriers. ROR LECs will simply continue to perform a series of calculations based on prospective cost and demand to arrive at rates designed to give companies the opportunity to achieve an authorized rate of return. In competitive markets, this proposed rate-making and cost allocation system of rules ignores creativity, slows release of new products and services to market, and discourages rate reductions. Rather than setting prices based on customer demand and market signals, LECs are required to make rate design decisions based upon maximizing return under a specified set of rules. Any rule that requires LECs to price artificially will create an unjustified opportunity for CLECs to price closer to cost or otherwise meet consumer needs.

In addition, ROR LECs must utilize resources trying to adapt the rules to an evolving competitive environment. ATU's Petition for Waiver of Part 69 rules is a recent example.⁵ Preparation and filing of this waiver petition not only consumed time and resources, it also provided ATU's competitors advanced

⁴ ROR Notice, para. 2.

⁵ ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules, *Waiver Request*, dated June 22, 1998.

knowledge of ATU's intentions in the market. Finally, jurisdictional differences in rate application mean little to customers interested in combining all of their local, toll, and Internet traffic onto consolidated facilities. The only true reform put forth in this docket is giving the ROR LEC the ability to reduce the SLC burden placed on Integrated Services Digital Networks ("ISDN") and Centrex service offerings.

C. In Competitive Markets, Rate-of-Return Regulation Is Anticompetitive.

In competitive markets, where the incumbent LEC no longer has market power, ROR regulation places the incumbent at a competitive disadvantage. The Commission's proposed treatment of subscriber line charges ("SLCs") clearly illustrates this disadvantage. The Commission has tentatively concluded that it "should adopt rate structure modifications for rate-of-return LECs that are similar to those that were adopted for price cap LECs in the Access Charge Reform Order."⁶ In the Access Charge Reform Order, the Commission directed price cap LECs to recover more of their common line non-traffic sensitive ("NTS") revenues directly from the end user by increasing the ceilings on SLCs for non-primary residential and multi-line business lines. The Commission believes that these modifications are needed to remove implicit subsidies and ensure that charges more accurately reflect the manner in which the costs are incurred, thereby promoting competition.⁷ However, charging more for non-primary residential lines than primary residential lines fails to achieve these objectives. This approach continues an implicit subsidy, is completely

⁶ ROR Notice, para. 35.

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contrary to the manner in which costs are incurred, and gives CLECs an arbitrary competitive advantage.

The Commission has tentatively decided not to increase the SLC ceiling for primary residential lines above the existing \$3.50 level because of concerns that an increase in the SLC might make basic telecommunications service unaffordable for some consumers.⁸ However, charging more for non-primary residential lines creates an implicit subsidy contrary to the intent of this proceeding. For example, a customer with two residential lines might pay \$9.50 in SLCs (\$3.50 primary, \$6.00 non-primary), while his next door neighbor would pay only \$3.50 for his primary line. The customer with two lines must pay, on average, a \$4.75 SLC per line, as compared to his neighbor's per-line rate of \$3.50. There is no cost basis for a different primary or non-primary SLC charge. Only by treating all lines uniformly, consistent with the stated objective of this proceeding, will the implicit subsidies among class of service be removed.

There is no market-based or cost-based reason for charging more for non-primary lines. The costs of NTS access does not change based upon the nature of the customer served. The market will not support rate applications that are inconsistent with the manner in which costs are incurred.⁹ Imposing uneconomic rate elements on incumbent LECs operating in competitive markets places those incumbents at a severe competitive disadvantage. CLECs have the

⁸ *ROR Notice*, para. 26.

⁹ The Alaska Public Utilities Commission imposed a similar rate structure, for similar universal service reasons, whereby subsequent nonrecurring service order charges were higher than service order charges for initial service. ATU's customers adamantly opposed this rate application and ATU was able to reverse the APUC's decision through regulatory processes, after over 2 years of implementation (Docket No. U-96-39(2)).

ability to recover the costs of their networks in any manner they please. CLECs will use an incumbent's irrational rate structure that intentionally discriminates among a class of customer to their advantage by targeting multi-line customers. CLECs will be able to obtain these customers by offering what customers perceive to be more rational rates or rate structures. The incumbent will be forced to forego the SLC revenues in order to maintain its customers. Unlike its competitor, however, the incumbent carrier has no other authorized means to recover the foregone revenues.

For these reasons, the Commission should refrain from imposing inefficient, ineffective, and problematic rate structures, and instead should proceed with implementing pricing flexibility to promote competition in a fair and equitable manner.

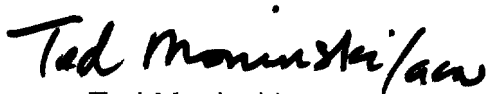
SUMMARY

Carriers facing intense competition must have the ability to react to market signals, their competitors and their customers' demands. These carriers cannot afford to wait until the Commission completes a series of rulemakings to introduce pricing flexibility. Carriers operating in competitive markets must be afforded regulatory relief now so that they can compete effectively. Pending resolution of the numerous proceedings meant to reform the national regulatory arena for rate-of-return companies, the Commission should adopt a streamlined

waiver process to allow pricing flexibility for those companies facing competition prior to implementation of the final pricing flexibility rules.

Respectfully submitted,

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